

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

April 27, 2007

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Board members:

**SUBJECT: AUTHORIZE THE DEPARTMENT TO ENTER INTO A LICENSE AGREEMENT WITH THE U.S. COAST GUARD FOR USE OF LEHUA ISLAND TO CONDUCT ECOSYSTEM RESTORATION ACTIVITIES**

**BACKGROUND:**

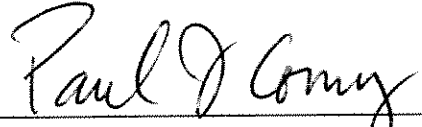
This Board Submittal requests approval of a License Agreement to conduct ecosystem restoration activities on Lehua Island including long term predator control, habitat restoration and management and biological surveys and monitoring.

The Island of Lehua is situated north of Niihau and is approximately 277 acres in size. It was set aside as a Lighthouse Site under the control of the Department of Commerce in a proclamation dated August 10, 1928. The island is designated as a State Seabird Sanctuary and DOFAW is responsible for the management of such Sanctuaries and is a trustee for seabirds and other native plant and wildlife resources on the Sanctuaries. Lehua is home to at least eleven species of seabirds as well as monk seals, and native coastal plants. On June 29, 2004 the Department entered into a Memorandum of Understanding with the U.S. Fish and Wildlife Service to develop the Lehua Island Ecosystem Restoration Project (Attachment 1). The Coast Guard on November 8, 2005, authorized the Service to conduct ecosystem restoration on Lehua through December 31, 2008 (Attachment 2). The Coast Guard has also requested that the Department enter into a license agreement to cover the Departments activities in the restoration efforts (Attachment 3).

RECOMMENDATION:

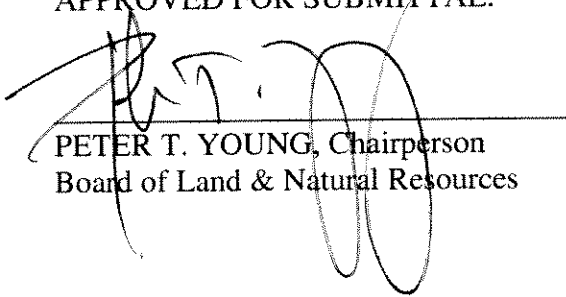
The Board authorizes the Department to enter into a License Agreement with the U.S. Coast Guard for use of Lehua Island for ecosystem restoration activities, subject to review and approval by the Attorney General.

Respectfully submitted,



PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson  
Board of Land & Natural Resources

**Memorandum of Understanding  
Between the Hawaii Department of Land and Natural Resources, Division of  
Forestry (DOFAW) and Wildlife and the U.S. Fish and Wildlife Service (USFWS)  
for the Lehua Island Ecosystem Restoration Project**

WHEREAS Lehua Island is a State Seabird Sanctuary and is home to a rich assemblage of seabirds, plants and other native Hawaiian species;

WHEREAS DOFAW is responsible for management of State Seabird Sanctuaries and is a co-trustee for seabirds and other native plant and wildlife resource on Lehua Island;

WHEREAS USFWS is a co-trustee for seabirds and other native plant and wildlife resources on Lehua;

WHEREAS alien species are present on Lehua, including rats, rabbits, cattle egrets, barn owls, and invasive weeds;

WHEREAS these alien species cause continuing environmental damage to native species and habitats and the removal of alien species will benefit all native species on Lehua;

WHEREAS the outplanting of native coastal plants will benefit the Lehua ecosystem;

WHEREAS the USFWS and the DOFAW are working with the Offshore Islet Restoration Committee to plan the Lehua Island Ecosystem Restoration Project;

NOW, THEREFORE the parties to this agreement hereby agree in principle as follows:

1. USFWS and DOFAW will cooperate on current and future wildlife research and restoration projects on Lehua.
2. DOFAW will work with the USFWS to prepare a joint State/Federal environmental analysis that meets the regulatory requirements of both the National Environmental Policy Act and the Hawaii Environmental Impact Statement Law.
3. Subject to budget constraints, DOFAW will provide staff and logistical support to the Lehua Island Ecosystem Restoration Project.
4. USFWS will provide technical advice and funding, subject to budget constraints, to support the Lehua Island Restoration Project.

5. DOFAW will provide appropriate permits to the USFWS and its cooperators to access Lehua and carry out activities associated with restoration actions.
6. Any party may terminate their involvement in the Memorandum of Understanding (MOU) by providing 90 days written notice to the other party.
7. This MOU is not to be construed as an instrument which commits any party to any specific expenditure of funds or to any exchange of funds for any purpose.
8. Additional cooperators may join the partnership, at a later date, by amendment of this agreement in writing, if such addition is deemed appropriate by the current parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the last date below written:

Hawaii Department of Land and Natural Resources

By: 

Date: JUN 29 2004

U.S. Fish & Wildlife Service, Pacific Islands Office

By: 

Date: 6/21/04

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
Fourteenth Coast Guard District

300 Ala Moana Blvd, 9-236  
Honolulu, HI 96850-4982  
Staff Symbol: (oan)  
Phone: (808) 541-2320  
Fax: (808) 541-2309

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U.S. FISH & WILDLIFE SVC  
PACIFIC ISLANDS FWO  
HONOLULU HI 96850

Mr. Patrick Leonard  
U. S. Fish and Wildlife Service – Pacific Islands Office  
300 Ala Moana Blvd., Rm. 3-122  
Honolulu, HI 96850

Dear Mr. Leonard:

The U. S. Fish and Wildlife Service (Service) is authorized by the U. S. Coast Guard (USCG) to conduct ecosystem restoration on Lehua Island. This authorization is valid from November 17, 2005, to December 31, 2008.

The Service shall perform all activities, and associated mitigation actions, in accordance with the Environmental Assessment (EA) attached to your letter request dated October 26, 2005. If conditions or operational needs at Lehua Island should change during the period of this agreement, the USCG reserves the right to terminate this agreement or revoke permission, with a 30 day notice provided to the Service.

If you have any questions, please contact Commander Beverly Havlik, Branch Chief for the Waterways Management Program, at (808) 541-2320.

Sincerely,

A handwritten signature in black ink, appearing to read "P. F. ZUKUNFT".

P. F. ZUKUNFT  
Captain, U. S. Coast Guard  
Acting, District Commander

Copy: MLCPAC (sr)  
CG CEU Honolulu  
CG ANT Honolulu  
USCGC WALNUT  
USCGC KUKUI

**REVOCABLE LICENSE FOR USE OF  
FEDERAL PROPERTY BY  
DIVISION OF FORESTRY AND WILDLIFE  
HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES**

This revocable license is issued pursuant to the authority provided in 14 U.S.C. § 93, on behalf of the United States by the Chief of the Civil Engineering Division of the United States Coast Guard Maintenance and Logistics Command Pacific, 1301 Clay Street, Suite 700N, Oakland, California, 94612-5203, hereinafter called the Licensor, to the Division Of Forestry And Wildlife, Hawaii Department Of Land And Natural Resources, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, HI 96813, hereinafter called the Licensee.

**1. LICENSED PREMISES:** Pursuant to the authority provided in 14 U.S.C. § 93, the Licensor hereby licenses to the Licensee the non-exclusive use of Lehua Island, State of Hawaii, to permit Licensee to conduct ecosystem restoration on said Lehua Island, including native plant restoration and seabird enhancement. The Hawaii Department of Land and Natural Resources has received a Wildlife Habitat Incentives Program grant from United States Department of Agriculture to perform restoration work on Lehua Island. Use must be coordinated with the Local Licensor Representative (Jay Silberman, Civil Engineering Unit Honolulu or his or her designated representative). No permanent interest in the real property subject to this license shall vest in the Licensee.

**2. TERM:** Upon execution by both parties this license is valid for the period 17 April 2007 through 31 December 2013, subject to termination and renewal rights as set forth herein.

**3. USE OF PREMISES:** The Licensee shall use the licensed premises to conduct ecosystem restoration on Lehua Island, including native plant restoration and seabird enhancement, as part of Licensee's participation in the multi-agency Lehua Island ecosystem restoration project under its mandate to conserve native seabirds, plants, and other natural resources in the State of Hawaii.

**4. RENT:** The License is issued at no cost because the use is of a civic nature and of benefit to the general public.

**5. TERMINATION:** This license is revocable at will. Advance notice to the Licensee is not required.

**6. NONPROFIT OPERATION AND CERTIFICATION:** The Licensee certifies that it is a state entity. Licensee may not conduct any activities on the facility for the purpose of raising funds or making a profit. If the Licensee charges a fee to others in connection with the Licensee's broadcasts from the facility, the Licensee shall submit to the U.S. Coast Guard: (1) a certified statement itemizing its operating expenses and revenues derived from the use of the facility, and (2) a check or money order made payable to the

U.S. Coast Guard for any revenues generated by the facility in excess of the expenses. The certified statement and payment, if any, shall be mailed to the following address: U.S. Coast Guard ART/Others, P.O. Box 403391, Atlanta, GA 30384-3391. A copy shall also be provided the Licensor at the address shown on the first page of this license.

**7. ASSIGNMENT/TRANSFER:** Licensee shall not assign or transfer this license.

**8. MAINTENANCE OF LICENSED PROPERTY:** Licensee shall maintain the premises furnished by the Licensor under this License, in good repair and condition.

**9. RESTORATION OF THE FACILITY:** The Licensee shall restore the premises to the condition in which it was received, except as noted under Paragraph 22, Environmental Protection, below. Licensee shall clean up and remove all trash and refuse generated by the Licensee's use of the facility and shall replace any property that it may have relocated during its use of the facility. If the Licensee fails to restore the premises, including the removal of trash and relocation of property, the Licensee shall pay any costs incurred by the Licensor to restore the facility.

**10. DAMAGE TO PROPERTY:** The Licensee is responsible for any damage to or destruction of any property belonging to the Licensor, which results from the Licensee's use of the facility. The Licensee shall promptly repair or replace any damage or destroyed property to the satisfaction of the Licensor.

**11. ALTERATIONS:** No alterations of existing premises or facilities, or construction of permanent type improvements shall be made without the approval of the Licensor. Any structure or device erected or installed without Licensor's written consent, or with consent and later found to interfere with the proper operation of any of Licensor's equipment, shall be removed immediately upon notification from the Licensor and at the Licensee's own expense. Upon revocation, expiration, or surrender of this license, and to the extent directed by the Licensor, the Licensee shall restore the premises or facilities to the same or as good condition as existed on the date of entry under this license, reasonable wear and tear excepted.

**12. SPECIAL PROVISIONS:** The Licensee shall at no time permit: (1) access to any Coast Guard equipment or facilities; (2) any interference with the Coast Guard operations or access rights; (3) removal of any Licensor property from the premises; (4) any activities while on the installation that involve the solicitation of funds for private or commercial interests, including fund raising for nonprofit organizations and causes; (5) any controlled substances to be brought onto, possessed, used, solicited, transferred, or sold on the installation; (6) any alcoholic beverages to be brought onto the installation, without the express permission of the Commanding Officer.

**13. NOTICE OF POTENTIAL HAZARDS:** The following hazards may be associated with the use of the facility by the Licensee: (1) structures may be composed in part of asbestos containing material of which some may be friable; (2) high power electronic transmitting devices that emit electric-magnetic (radio waves) of various frequencies, and

(3) high winds, ice snow, and other harsh environmental conditions. When present, these conditions may make walking or bicycle riding very dangerous. The use of the described, or similar, devices and the hazardous facilities in the vicinity or along the access routes to the licensed facilities are dictated by the weather conditions, operational requirements, and safety concerns. Their use can not be delayed or otherwise affected because of the Licensee's use of the facilities. The Licensee shall advise its officers, employees, contractors, agents, and guests and the participants in its activities of the potential hazards.

**14. LIABILITY:** The Licensee shall be liable for any loss of or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the Licensor.

**15. INDEMNIFICATION:** Licensee shall indemnify and hold harmless the United States, the Coast Guard, its officers, agents, servants and employees, from all liability they may be liable for any tortuous acts under the Federal Tort Claims Act (28 USC §2671-2680) as amended, any applicable environmental law or regulation, or other laws, including the death or injury to any persons, or loss or damage to the property of any persons resulting from the use of the licensed property by the Licensee.

Licensee shall indemnify and hold harmless the Licensor against all actions, claims, demands, liabilities, and damages that may in any manner be imposed on or incurred by Licensor as a result of any act, default, or omission of the Licensee, its officers, employees, contractors, agents, or guests or the participants in its activities in connection with the Licensee's use of the facility or for any injuries sustained by an individual who has come on the facility as a result of the Licensee's use of the facility and may be injured in the course of participating in an inherently hazardous activity, an athletic activity, or another recreational activity while on the installation, whether or not the activity is a sanctioned part of the Licensee's use of the facility.

Licensee further agrees to indemnify and hold the Licensor harmless for any public or private environmental claims or liabilities arising from use of the described premises or facilities pursuant to this license. If alcoholic beverages are served during the Licensee's use of the facility, the Licensee shall indemnify and hold harmless the Licensor against all actions, claims, demands liabilities, and damages that may in any manner be imposed on or incurred by Licensor as a result of any act or omission, no matter whether the act or omission occurs on or off the installation, following the consumption of alcohol at the facility by the Licensee, its officers, employees, contractors, agents, or guests or the participants in its activities. Licensee shall indemnify and hold harmless the Licensor against all actions, claims, demands, liabilities, and damages that may in any manner be imposed on or incurred by Licensor as a result of any act, default, or omission of the Licensee, its officers, employees, contractors, agents, or guests or the participants in its activities in connection with the use of the facility under the license. Licensee shall indemnify and hold harmless the Licensor against all actions, claims, demands liabilities, and damages that may arise from the hazards listed above and the Licensee's potentially incompatible use of the facility.



**16. INSURANCE:** Licensee is a self-insured governmental entity.

**17. NON-DISCRIMINATION:** The Licensee, for itself and its officers, employees, contractors, agents and guests agree that: (1) no individual on the grounds of race, sex, color, religion, age, or national origin shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in the use of the facility; (2) no individual on the grounds of race, sex, color, religion, age, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the construction of any improvements at the facility or in the furnishing of services in connection with the use of the facility by the Licensee; and (3) that the Licensee shall use the facility in compliance with the regulations of Title VI or the Civil Rights Act of 1964.

**19. OFFICIALS NOT TO BENEFIT:** No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this license or any benefit to arise there from, but this provision shall not be construed to extend to this license if made with a corporation whose membership, includes a member or delegate to Congress or Resident Commissioner, who indirectly receives a general benefit from this license.

**20. COVENANT AGAINST CONTINGENT FEES:** The Licensee warrants that no person or selling agency has been employed or retained to solicit or secure this license upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Licensor shall have the right to annul this license without liability or in its discretion recover from the Licensee the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration if any, herein set forth.

**21. DISPUTES:** Except as otherwise provided for in this license, any dispute concerning a questions of fact arising under this license which is not disposed of by agreement shall be decided by the Commander (s), Maintenance & Logistics Command Pacific, who shall reduce it decision to writing and mail or otherwise furnish a copy thereof to the Licensee. The decision of the Commander (s), Maintenance & Logistics Command Pacific shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Licensee mail or otherwise furnish to the Commander (md), Maintenance & Logistics Command Pacific a written appeal. The decision of the Commander (md), Maintenance & Logistics Command Pacific or his authorized representative for the determination of such appeals shall be final and conclusive.

This provision shall not be pleaded in any suit involving a question of fact arising under this license as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, that such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Licensee will proceed diligently with the performance of the license and in accordance with the

decision of the Commander (s), Maintenance & Logistics Command Pacific. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in these paragraphs. Nothing in this license, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

**22. GOVERNING LAW AND REGULATIONS:** The licensee, its officers, employees, contractors, agents, and guests and the participants in its activities, while on the Coast Guard installation are subject to all applicable Federal, state, and local laws, regulations, directives, and orders, including those issued by the Licensor or Local Licensor Representative.

**23. ENVIRONMENTAL PROTECTION:** Licensee's use of the premises is considered a major federal action but a joint Federal-State [U.S. Fish and Wildlife Service (FWS) and Licensee] Environmental Assessment (EA) was prepared for Lehua Island Ecosystem Restoration and a Finding of No Significant Impact (FONSI) was approved by the FWS on 30 September 2005. The Licensee may not unlawfully pollute the air, ground, or water, nor create a public nuisance. The Licensee shall, at no cost to the Licensor, promptly comply with all applicable Federal, state, and local laws, regulations, and directives regulating the quality of the environment. This does not affect the Licensee's right to contest the validity of such laws, regulations, or directives or to try to enjoin their applicability. The Licensee shall use all required means to protect the environment and natural resources from any damage arising from the Licensee's use of the facility and activities incident to its use. If any damage results to the environment or natural resources, the Licensee shall restore the environment or damaged resources, except to the extent that the Licensee's proposed use of the premises involves restoration of the premises' ecosystem as described in the aforementioned FONSI. The Licensee agrees to comply with all applicable federal, state and local environmental laws and regulations, including, but not limited, to those laws concerning any petroleum products, toxic substances, medical wastes and hazardous materials, substances or wastes.

**24. STATE AND LOCAL PERMITS, LICENSES AND TAXES:** The Licensee is solely responsible for obtaining any state or local permits or licenses necessary for its proposed use of the facility, as well as for the payment of any state or local taxes generated by its activities.

**25. DESIGNATION OF PRINCIPAL LICENSEE'S REPRESENTATIVE:**

Paul Conry, Administrator is designated as the Principal Licensee Representative.

The Licensee shall coordinate its use of the facility with the Local Licensor Representative.

**26. ATTACHMENTS:** Deleted

**27. NOTIFICATION:** The Licensee shall notify all of its officers, employees, contractors, agents, or guests who will use the facility of the terms of this license and that they are required to comply with all applicable terms of this license if they enter the installation.

**28. ENTIRE AGREEMENT:** This License, with attachment, constitutes the only agreement between the Licenser and the Licensee. Any prior understanding or representation of any kind, which proceeded the date of this License, are not binding on either party, except to the extent the understandings are incorporated into this license.

United States Coast Guard

By: 

**V.K. HOLTZMAN BELL**

**Captain, U.S. Coast Guard**

**Chief, Civil Engineering Division**

**By direction of the Commander**

**Date: April, 16, 2007**

USCG

FINDING OF NO SIGNIFICANT IMPACT

FOR

LEHUA ISLAND ECOSYSTEM RESTORATION PROJECT

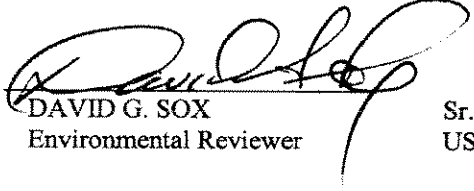
LEHUA ISLAND, STATE OF HAWAII

The United States Coast Guard (USCG) proposes to issue a license to Hawai'i Department of Land and Natural Resources' Division of Forestry and Wildlife (DOFAW) to carryout the Lehua Island Ecosystem Restoration Project during the period from 17 April 2007 through 31 December 2013. DOFAW is proposing the ecosystem restoration work on Lehua Island, State of Hawai'i, which is Federal property administered by the USCG. The USCG operates an aid to navigation called Lehua Rock Light No. 29935 on the top of Lehua Island. USCG permission is required to access and carry out the proposed ecosystem restoration work, which includes the eradication of introduced rats that eat native seabirds and native plants and planting native coastal plants on the island to work towards restoration of the native coastal ecosystem that existed prior to the introduction of rats, rabbits, and weeds.

This project has been thoroughly reviewed by the USCG and it has been determined, by the undersigned, that this project will have no significant effect on the human environment.

This finding of no significant impact is based on the attached adopted September 2005 Final Environmental Assessment (EA), Lehua Island Ecosystem Restoration Project. The Final EA was prepared by the United States Fish and Wildlife Service and DOFAW; the USCG was a cooperating agency on the EA. The EA has been independently evaluated by the USCG and determined to adequately and accurately discuss the environmental issues and impacts of the proposed project and provides sufficient evidence and analysis for determining that an environmental impact statement is not required. The USCG takes full responsibility for the accuracy, scope, and content of the attached environmental assessment.

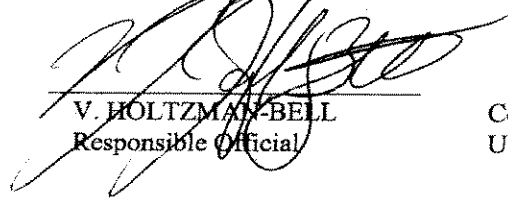
11 Apr 2007  
Date

  
DAVID G. SOX  
Environmental Reviewer

Sr. Environmental Protection Specialist  
USCG MLCPAC Civ Engrg Div (s)

I have considered the information contained in the EA, which is the basis for this FONSI. Based on the information in the EA and this FONSI document, I agree that the proposed action as described above, and in the EA, will have no significant impact on the environment.

16 Apr 2007  
Date

  
V. HOLTZMAN-BELL  
Responsible Official

Contracting Officer  
USCG MLCPAC (s)